

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

MONDAY, THE 26TH FEBRUARY 2007 / 7TH PHALGUNA 1928

Crl.L.P..No. 519 of 2006()

CC.1929/2001 of J.M.F.C.-I, KOLLAM
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PETITIONER/COMPLAINANT;

MATHEW THARAKAN, MARRY BUNGLOW,
MULAVANA, KUNDARA.

BY ADV. SRI.S.SANTHOSH KUMAR

RESPONDENTS: ACCUSED AND STATE.

1. MATAHI THANKACHAN, PANAPPURAYIDOM,
NALLILA P.O. KOLLAM.
2. THE STATE OF KERALA, REPRESENTED BY
THE REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

R1- BY ADV. SRI.B.SURESH KUMAR
R2-PUBLIC PROSECUTOR SRI.P.RAVINDRA BABU

THIS CRIMINAL LEAVE PETITION HAVING BEEN FINALLY HEARD
ON 26/02/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

K. THANKAPPAN, J.

Crl.L.P.No.519 OF 2006

Dated this the 26th day of February, 2007.

O R D E R

This application is filed to have a special leave to appeal against the judgment in C.C.No.1929/2001 on the file of the Judicial Magistrate of First Class-I, Kollam. As per the complaint, the 1st respondent had borrowed an amount of Rs.1,75,000/= from the complainant/petitioner and in discharge of the said debt, the 1st respondent had issued Ext.P1 cheque and when the cheque was presented for encashment, the same was dishonoured on the ground of insufficiency of fund in the account of the 1st respondent. On complying the statutory provisions regarding notice etc., a complaint has been filed. To prove the case against the 1st respondent, the petitioner/complainant was examined as PW1 and relied on Exts.P1 to P6. After closing the complainant's evidence, the 1st respondent was questioned under Section 313 of the Code of Criminal Procedure. Denying the allegations in the complaint, the 1st respondent had stated before the court that there was a transaction between the son-

in-law of the 1st respondent and the complainant/petitioner for the construction of a house as evident from Ext.D2 agreement and since the construction was not completed, a case was filed before the Circle Inspector of Police and the C.I of Police summoned the parties and arranged a compromise in the matter and on the basis of that compromise, the C.I of Police directed the 1st respondent to give Ext.P1 cheque. Hence, no consideration has been given to the 1st respondent by the petitioner/complainant for the issuance of Ext.P1 except the terms and conditions contained in Ext.D2 agreement. The trial court had considered the entire evidence and found that the petitioner/complainant failed to prove the transaction between himself and the 1st respondent which led to the passing of Ext.P1 cheque. The trial court also relied on Exts.D1 to D6 documents produced by the 1st respondent and the evidence adduced by the 1st respondent while he was examined as DW1. After considering the entire case, the trial court found that the petitioner/complainant failed to prove the transaction between himself and the 1st respondent as alleged in the complaint, at the same time, the trial court convinced that the case set up by the 1st respondent

is more probable and the cheque was issued only due to the intervention of the C.I of Police on the basis of Ext.D2 agreement.

In the above circumstances, this Court is of the view that the petitioner/complainant failed to prove the case against the 1st respondent under Section 138 of the N.I.Act. Accordingly, this leave application stands dismissed as meritless.

K.THANKAPPAN, JUDGE.

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